

Office petition

ZZW



CERTIFICATE OF MAILING

Date of Deposit: May 24, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service under 37 CFR § 1.8 with sufficient postage as First Class mail on the date indicated above in an envelope addressed to:

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450.

Charles J. Rupnick

(Typed or printed name of person mailing)

The signature of Charles J. Rupnick is written in cursive ink over a horizontal line. Below the line, the text "(Signature of Person Mailing)" is printed.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. :	10/698,254	Confirmation No.:	2943
Inventor(s) :	Steven A. Foote, et al.		
Filed :	October 31, 2003		
TC/A.U. :	2856		
Examiner :	Helen C. Kwok		
Docket No. :	H0003728		
Customer No. :	00128		

Mail Stop: **RCE**
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Petition Under 37 C.F.R. § 1.313 to Withdraw Application From Issue

Sir:

The Applicant hereby petitions under 37 CFR § 1.313 (c)(2) for withdrawal of the instant application from issue after the issue fee has been paid for consideration of a request for continued examination in compliance with 37 C.F.R. § 1.114.

Remarks/Arguments begin on page 2 of this paper.

05/31/2005 SSESHE1 00000026 10698254

01 FC:1464

130.00 0P

Serial No. 10/698,254
Petition dated May 24, 2005
Reply to Notice of Improper RCE mailed on May 13, 2005

REMARKS/ARGUMENTS

The instant application has been allowed and the issue fee has been paid. However, after payment of the issue fee, the Applicant received results of an international search carried out in corresponding international patent application number PCT/US2004/036139 filed under the Patent Cooperation Treaty on October 29, 2004.

The Applicant filed a request for continued examination (RCE) for consideration of an Information Disclosure Statement filed therewith that discloses the international search results described above. The RCE was denied because the issued fee was paid before the filing date of the RCE.

The Applicant respectfully petitions to withdraw the instant application from issue.

The Applicant also respectfully petitions reconsideration of the RCE filed by the Applicant on May 6, 2005, and continuation of examination of the instant application.

The Applicant also respectfully requests consideration of the Information Disclosure Statement filed with the above RCE on May 6, 2005.

The petition fee as set forth by 37 C.F.R. § 1.17(h) is enclosed herewith.

If the Examiner has questions or wishes to discuss any aspect of the case, the Examiner is encouraged to contact the undersigned at the telephone number given below.

Respectfully submitted,

Attorney:

Charles J. Rupnick

43,068

Date:

May 24, 2005

Post Office Address:

PO Box 46752

Seattle, WA 98146

Telephone:

(206) 439-7956

Facsimile:

(206) 439-3223



PTO/SB/21 (04-04)
Approved for use through 07/31/2006. OMB 0651-0031
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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

7

Application Number	10/698,254
Filing Date	October 31, 2003
First Named Inventor	Steven A. Foote
Art Unit	2856
Examiner Name	Helen C. Kwok

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please Identify below): 2 pages copy of Notice 2 Return Receipt Postcards
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Charles J. Rupnick (Reg. No.: 43,068)
Signature	
Date	May 24, 2005

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Charles J. Rupnick
Signature	
	Date
	May 24, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**PETITION FEE
Under 37 CFR 1.17(f), (g) & (h)
TRANSMITTAL**
(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	10/698,254
Filing Date	October 31, 2003
First Named Inventor	Steven A. Foote
Art Unit	2856
Examiner Name	Helen C. Kwok
Attorney Docket Number	H0003728

Enclosed is a petition filed under 37 CFR 1.313 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 130 is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.

Payment of Fees (small entity amounts are NOT available for the petition fees)

The Commissioner is hereby authorized to charge the following fees to Deposit Account No. _____:
 petition fee under 37 CFR 1.17(f), (g) or (h) any deficiency of fees and credit of any overpayments
Enclose a duplicative copy of this form for fee processing.

Check in the amount of \$ _____ is enclosed.

Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462

For petitions filed under:

§ 1.53(e) - to accord a filing date.
§ 1.57(a) - to accord a filing date.
§ 1.182 - for decision on a question not specifically provided for.
§ 1.183 - to suspend the rules.
§ 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
§ 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463

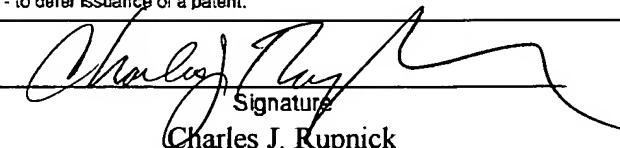
For petitions filed under:

§ 1.12 - for access to an assignment record.
§ 1.14 - for access to an application.
§ 1.47 - for filing by other than all the inventors or a person not the inventor.
§ 1.59 - for expungement of information.
§ 1.103(a) - to suspend action in an application.
§ 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
§ 1.295 - for review of refusal to publish a statutory invention registration.
§ 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
§ 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
§ 1.550(c) - for patent owner requests for extension of time in ex parte reexamination proceedings.
§ 1.956 - for patent owner requests for extension of time in inter partes reexamination proceedings.
§ 5.12 - for expedited handling of a foreign filing license.
§ 5.15 - for changing the scope of a license.
§ 5.25 - for retroactive license.

Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464

For petitions filed under:

§ 1.19(g) - to request documents in a form other than that provided in this part.
§ 1.84 - for accepting color drawings or photographs.
§ 1.91 - for entry of a model or exhibit.
§ 1.102(d) - to make an application special.
§ 1.138(c) - to expressly abandon an application to avoid publication.
§ 1.313 - to withdraw an application from issue.
§ 1.314 - to defer issuance of a patent.


Signature
Charles J. Rupnick

Typed or printed name

May 24, 2005

Date

43,068

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



UNITED STATES PATENT AND TRADEMARK OFFICE

1. CWD/KC
1. CWD/KC
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
ATTORNEY: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO	FILING DATE	FIRST NAME & LAST NAME OR ENTITY NAME & ADDRESS RECORDED ON THIS PAGE	ATTORNEY DOCKET NO	CONFIRMATION NO
10/698,254	10/31/2003	Steve A. Foutz HONEYWELL INTERNATIONAL INC 101 COLUMBIA ROAD P O BOX 2245 MORRISTOWN, NJ 07962-2245	H0003728	2043
128	7590	US/13/2005 MAY 17 A 9:31 CENTRAL RECORDS - MTO		

EXAMINER
KWOK, HELEN C

ART UNIT	PAPER NUMBER
2856	

DATE MAILED 05/13/2005



Please find below and/or attached an Office communication concerning this application or proceeding.

Obstacles



10698254



DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 5/9/05 is improper for reason(s) indicated below:

- 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice **MUST** be returned with any reply.

Direct the reply and any questions about this notice to:

MR. DORRIAN EVANS, Examining Group 2800

(S71)
703-30-212-1572

FORM PTO-2051 (Rev. 3/2001)